The Planning Inspectorate

Appeal Decision

Site visit made on 20 August 2019

by Ian Harrison BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2019

Appeal Ref: APP/W0340/W/19/3230958
Herongate Leisure Centre, Charnham Park, Hungerford, Berkshire RG17 0YU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Kerridge Properties Ltd against the decision of West Berkshire District Council.
- The application Ref 19/00429/FUL, dated 13 February 2019, was refused by notice dated 24 April 2019.
- The development proposed is the change of use of former children's creche (Class D1) to 4 serviced apartments (Class C1).

Decision

1. The appeal is allowed and planning permission is granted for the change of use of former children's creche (Class D1) to 4 serviced apartments (Class C1) at Herongate Leisure Centre, Charnham Park, Hungerford, Berkshire RG17 0YU in accordance with the terms of the application, Ref 19/00429/FUL, dated 13 February 2019, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Kerridge Properties Ltd against West Berkshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The main parties disagree how the proposed development should be classified with respect to the content of The Town and Country Planning (Use Classes) Order 1987 (UCO).

4. The Council considers that the use would fall outside Class C1 of the UCO, contrary to the terms of the application, as they advise that it would represent either a Class C3 (dwellinghouses) use or a sui generis use, that is outside of the UCO classifications. However, I am obliged to assess the development that is proposed and proceed on the basis that the use will be as stated. An example from the London Borough of Newham[1] has been brought to my attention by the Council where various elements of the use were assessed and it was deemed in that case that the use was as a hotel. The circumstances of that case were materially different as it appears that the Inspector was required to assess whether development had occurred and how the emerging use should be categorised. In this case it is clear that the appellant intends the use to fall within Class C1 of the

[1] Appeal Ref: APP/G5750/C/15/3005653

UCO. Similarly, I have had regard to the case law[2] that has been identified by the Council, but as this relates to when the occupation of an existing dwellinghouse constitutes a change of use, I do not find it to be directly applicable to this case.

5. Whilst the accommodation would appear to be laid out as modest one bedroom apartments, there is no reason to assume that they would be used in that way. The accommodation would not be served by substantial communal facilities such as a restaurant and few on-site services will be available, but this might not be unexpected for small scale accommodation falling within Class C1 of the UCO and the appellant's intentions on how the development would be managed and occupied indicate a use akin to those in class C1. All this leads me to determine the appeal on the basis of the development which was applied for.

Main Issues

6. The main issues are:

- Whether the appeal site would be a suitable location for the proposed use with particular regard to the designation of the site as part of a protected employment area.
- Whether the use would be compatible with surrounding land uses.

Reasons

Suitability of the Location

7. The appeal site currently comprises part of the ground floor of a larger Leisure Centre building and the associated car park and vehicular access. The former use of the site is stated to have been as a creche, falling within Class D1 of the UCO. The appeal site and the remainder of the Leisure Centre site are a contrast to the developed area that surrounds the site which is allocated as a Protected Employment Area. Uses of a commercial nature, appearing to consist of office and light industrial uses, surround the wider Leisure Centre site on three sides.

8. Policy CS9 of the West Berkshire Core Strategy (2006-2026) Development Plan Document (WBCS), Adopted July 2012, states that proposals for industry, distribution and storage uses will be directed to the designated Protected Employment Areas. Office uses are also supported if town centre locations are not available. The policy also states that employment generating uses falling outside a Class B classification will also be considered favourably where they are complementary to the existing businesses within the locality and are consistent with the integrity and function of the employment area. I consider that the presence of serviced apartments whose primary function is to serve visitors to the employment area would be of benefit to the companies based in the locality and as such the use would be complimentary to the employment area.

9. The former use of the site fell within Class D1 of the UCO and is part of a larger site that falls within Class D2. In this context it is apparent that uses falling outside the B Classes of the UCO have been found acceptable within the area that is the subject of the employment designation. The proposal would see the replacement of one complementary use with another and as such would not cause the loss of employment floorspace that would undermine the employment strategy.

10. Policy CS9 does allow for complementary employment generating uses to be located within the Protected Employment Area and as such, although the level of employment generated would be modest, it is not uncommon for uses falling within

[2] Moore v Secretary of State for Communities and Local Government [2012]

Class C1 of the UCO to be located within employment areas. As the Leisure Centre is not within the appeal site or shown to be on land within the appellant's control, it cannot be certain that the management of the premises would be undertaken in conjunction with the Leisure Centre. Irrespective of this, there would be some employment arising or sustained as a result of the proposed use and as such the proposal is not contrary to Policy CS9

11. The accommodation would represent a Main Town Centre Use as defined by the National Planning Policy Framework and as such policy CS9 requires that a sequential test is undertaken. This did not form part of the reason for the refusal of the application but has subsequently been raised by the Council. Minimal evidence has been provided in relation to the sequential test by the appellant and, whilst I note the appellant has identified a number of local business that would be likely to use the proposed accommodation, the occupation would not be limited to the employees of those businesses.

12. However, as the primary intention of the accommodation is to serve the surrounding employment area, it is considered that a Town Centre or edge of centre site would not be suitable and therefore the sequential test is met. As the proposal would represent the re-use of an existing building, I find that the absence of evidence in relation to the sequential test should not prevent a complementary use being found acceptable at the site, in accordance with Policy CS9.

13. The Council has identified conflict with policy CS1 which relates to the location of residential development. As set out above, it is not the intention of the proposal to create dwellinghouses at the appeal site and as such this is not relevant to the development proposed.

14. The site is therefore a suitable location for the proposed use having particular regard to the designation of the site as part of a Protected Employment Area. Therefore, the development accords with policy CS9 of the WBCS which seeks to facilitate and promote the growth and forecasted change of business development in the plan period. The proposal also accords with Area Delivery Plan Policy 5 of the WBCS which identifies that Protected Employment Areas will play a role in supporting the economy.

Compatibility with surrounding land uses

15. As set out above, the appeal is to be determined on the basis that the use would fall, as applied for, within Class C1 of the UCO. The use would not fall within Class C3 of the UCO and as such it is not necessary to consider the standard of living accommodation as if dwellinghouses were proposed. The objection that has been raised by the Council, which is framed in terms of a residential use of the site being incompatible with the surrounding uses, is therefore unrelated to the development proposed.

16. The site is located close to the junction of two roads. The adjacent Leisure Centre has plant in close proximity to the proposed accommodation and the hum of plant from another building was audible at the frontage of the site but not within the building at the time of my visit. It would appear reasonably likely that a similar noise environment would be usual within this location. I have also had regard to the operating hours that are approved at a nearby site and the opening hours of the leisure centre which have been highlighted by the Council.

17. The intention of the appellant is to enable the use of the accommodation for longer continuous periods than might be normally expected of hotel accommodation. However, the occupiers of such accommodation would not expect the same level of amenity as the occupiers of a dwellinghouse and would not be as committed to the

accommodation. As set out above, it is not uncommon for hotels and other uses falling within Class C1 of the UCO to be located within employment areas. In order to ensure that the accommodation is fit for purpose and does not become a constraint for neighbouring land uses, having regard to paragraph 182 of the Framework, a condition can be used to ensure that concerns about noise are adequately controlled.

18. Based on the above, the use would be compatible with the surrounding land uses. The proposal therefore accords with policy CS14 of the WBCS which requires that development is of high quality, functions well and adds to the overall quality of the area. The proposal also accords with the Framework which requires that a high standard of amenity is provided for existing and future users. The Council has cited conflict with policy CS19 of the WBCS. However, as this relates to the Historic Environment and Landscape Character, I do not consider it to be relevant.

Conclusion and Conditions

19. I have imposed conditions to require that the development is undertaken in accordance with the approved plans in the interests of clarity. A condition to require the associated external alterations to be undertaken in suitable materials is necessary in the interests of the character and appearance of the existing building.

20. Conditions limiting the use, the duration of the use and the extent of the accommodation are necessary to ensure that the use of the building is as approved and for the avoidance of doubt in the future. I have therefore imposed amended versions of the suggested conditions which meet the relevant tests. For the reasons set out above, I have also imposed a condition to require noise protection to ensure that the accommodation is fit for purpose. In this regard, the condition suggested by the Council would have been unnecessarily onerous as it does not allow for the conclusion to be reached that the existing level of mitigation is adequate and I have therefore used an amended version of the suggested condition.

21. A condition to remove permitted development rights relating to the change of use of the accommodation hereby approved is not necessary as no such permitted development rights exist and the use is adequately controlled by the condition that is imposed

22. Parking is already available and laid out at the site and therefore the condition which requires the provision of parking prior to occupation is not necessary. In the context of this site, I do not consider that it is necessary to control the retention of parking as the spaces form part of a wider parking area that is likely to be available to occupiers and even if this were not available, the continuation of existing on-street parking would not pose a threat to highway safety or the flow of traffic. A condition requiring the provision of an electric charging point is however reasonable to impose in the interests of promoting efficient modes of transport, although this does not need to be secured prior to the commencement of development. In the context of this site, it is not necessary to secure the provision of a parking and turning area during the construction period.

23. For these reasons, subject to the conditions set out in the attached schedule, the appeal is allowed.

Ian Harrison

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3247 – (Su) 01 Existing Plan and Elevations (Rev B), 3247 – (L) 01 Proposed Plan and Elevations (Rev B) and 3247 – (Su) 02 OS, Location and Site Plan.

3) The development hereby approved shall take place only on the ground floor of the section of the building that is within the appeal site and not the first floor of that part of the building.

4) The premises shall be used only for purposes falling within Class C1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

5) None of the serviced apartments hereby permitted shall be occupied by or let to the same person for a continuous period of more than 90 days. Records of all lettings and their duration shall be kept by or on behalf of the owner of the accommodation and shall be made available to the Local Planning Authority within 14 days of a written request from the Local Planning Authority being received by the owner of the accommodation.

6) The materials to be used in the development hereby permitted shall be as specified on the application form and the approved drawings.

7) Prior to the occupation of the development hereby permitted, a noise impact assessment and details of any noise mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. All approved mitigation measures shall be provided in accordance with the approved details prior to the occupation of the accommodation hereby approved and shall be subsequently retained in perpetuity.

8) Prior to the occupation of the development hereby permitted, details of an electric vehicle charging point to serve the development shall have been submitted to and approved in writing by the Local Planning Authority. The accommodation shall not be occupied until the electric vehicle charging point has been provided in accordance with the approved details. The charging point shall thereafter be retained and kept available for the use of an electric vehicle.